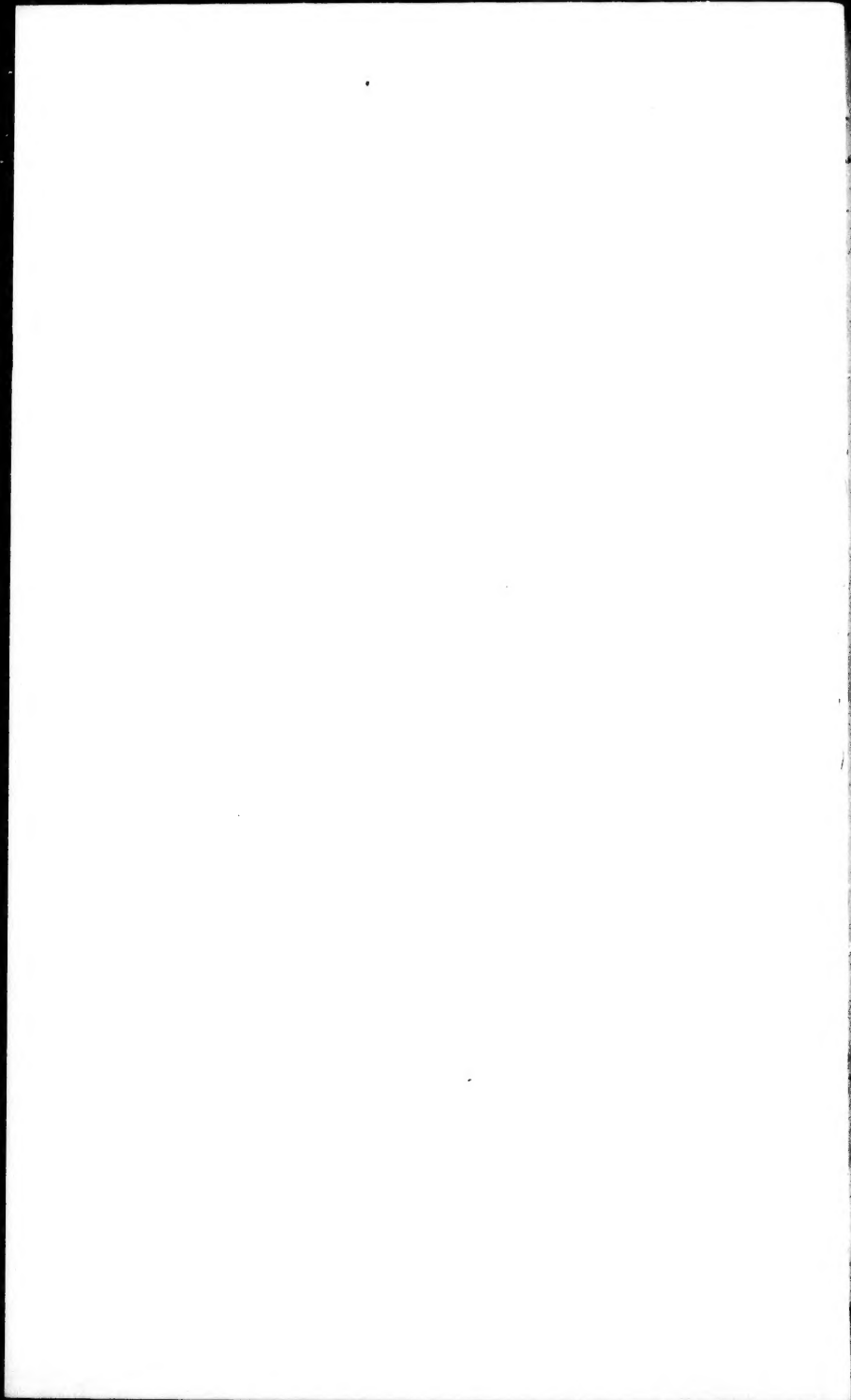




COPY OF
LETTER
TO
HIS EXCELLENCY
SIR BENJAMIN D'URBAN,
G. C. B., K. C. H.,
COMMANDING THE FORCES IN CANADA.

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*Copy of Letter to His Excellency SIR BENJAMIN
D'URBAN, G.C.B., K.C.H., Commanding the
Forces in Canada.*

TORONTO, 9th October, 1847.

SIR,

On the 27th ultimo, I had the honour of addressing to Assistant Commissary General Bailey, at Kingston, a letter respecting the transport of troops, &c., in other vessels than my own, across Lake Ontario,—(I having the contracts from Kingston to every British port on Lake Ontario, with the exception of the Bay of Quinte) ; and not having been favoured with a reply to that communication, I beg leave to bring the matter under the notice of His Excellency the Commander of the Forces ; and to furnish His Excellency with a copy of my letter to Mr. Bailey.

That letter was as follows :—

TORONTO, September 27, 1847.

SIR,

I have the honour to acknowledge the receipt of your letter of the 23rd instant, in which you state that you have received my letters acquainting you that I had placed the steamers *Admiral* and *Scotland* at your disposal for the transport of troops, &c., from Kingston to Hamilton or Queenston, as might be required ; but that no requisition had been received by you for the service alluded to—and that due notice would be given to me at any time that my boats might be required.

At the time you made that communication, you were aware that a requisition had been made to convey the troops on board the steamer *Magnet* (not one of my steamers, nor named in my contract for the transport of troops), from Kingston to Queenston, and that they would embark, either on that or the following day, on board the *Magnet*, but you made no allusion whatever to that circumstance.

Perceiving that the military authorities at Kingston had determined to disregard the contract made by you (on the part of Her Majesty's Government) with me, and to treat it on the present occasion as a piece of blank paper, as if the engagements made on the part of Government were unworthy of consideration, I submitted my contracts with Government, for the transport of troops, &c., to the Honourable Mr. Sullivan, Queen's Counsel, and for many years President of Her Majesty's Executive Council of Canada, for his opinion thereon; and I beg leave to furnish it for the consideration of the authorities at Kingston, to whom I allude:—

“DONALD BETHUNE, Esquire, of Toronto, requests my opinion, under the following circumstances:—

“He has been for many years an extensive owner of steam vessels navigating Lake Ontario; and, besides the general business of the lake, he has been a contractor with Her Majesty's Post Office for the conveyance of the mails, and with Her Majesty's Commissariat Department, for the transport by water of troops, baggage, horses and military stores.

“In the early part of this year, in pursuance of advertisements published by H. M. Commissariat Department, he tendered for the conveyance by water of troops, baggage, horses and military stores, to and from the several British ports on Lake Ontario; and his tenders being accepted, he entered into three several contracts, for the present season, with Assistant Commissary General Bailey and Assistant Commissary General Thomson, acting on behalf of Her Majesty.

“One of the contracts was for the conveyance of troops, &c., between Kingston, Cobourg, Port Hope, Whitby and Toronto; another contract was for the conveyance of troops, &c., between Toronto, Port Credit, Oakville, Wellington Square and Hamilton; and another, for the conveyance of troops, &c., between Toronto, Port Dalhousie, Queenston and Niagara;—upon which several routes he had lines of boats running, and made every preparation for the fulfilment of the contracts on his part, in the full faith and expectation that he would be employed in the whole transport and conveyance of troops and stores on Lake Ontario, which might be required by H. M. Government, with the exception of the transport between Kingston and the Bay of Quinte, which was the subject of a contract with other steamboat owners.

“He was bound with sureties under a heavy penalty in each of these contracts, to convey on board steamboats, all such

officers, soldiers and other persons belonging to or attached to the army, with their families, horses, baggage and effects, and all such provisions and other public stores, as he or his agents might be required to transport to and from the ports mentioned in the contracts respectively, he not being required to deviate from the usual route or period of departure, without a special agreement, into which, however, he was bound to enter if required. He was to furnish ample accommodation at all times in daylight usually appropriated for the transaction of public business, for the shipment of the passengers, &c.; and at later periods of the evening, should the boats remain so long in port, and the emergencies of the service render it necessary, his boats, when engaged in the conveyance of troops, were to be subject to the inspection and approval or rejection of the Quarter Master General's Department: he was to notify the senior Commissariat Officers, at Kingston and Toronto, of the days and probable time of departure established at the opening of navigation, and of any subsequent alteration; and should he fail to have boats available to meet the requisitions of Government for any particular service, not admitting of delay, he was to engage such other boats in port as might be pointed out by the senior Commissariat Officer on the spot; and in case of uncalled for delay, it was to be lawful for the said Commissariat Officer to engage the same, and to deduct such expense as might be incurred in consequence, beyond the rate payable to the contractor from the next payment becoming due to him. The officers were to be boarded as cabin passengers: the non-commissioned officers and their wives and children, to be treated as steerage passengers; and children under three years of age were to be conveyed free.

"In the month of July last, he was furnished with a copy of a letter addressed by Major DeRottenburg to Assistant Commissary General Bailey, directing an enquiry of him (Mr. Bethune) whether upon his receiving two days' notice of the movement of any considerable body of troops, he would be prepared to move them from Kingston to Toronto, the same evening of their arrival by the river mail steamer, in the event of her arrival being delayed beyond the usual hour for the boat's departure—five o'clock, P.M.—and whether he would consent to take three companies from Kingston to Hamilton without transshipment; to which enquiries, with some qualifications, he answered in the affirmative.

"He then received a letter, dated 19th July, annexing a copy of one from the Commissary General, and stating that it was the

intention of His Excellency the Commander of the Forces to effect an exchange of troops between Toronto and Kingston, and directing the Assistant Commissary General, Bailey, to endeavour to make arrangements with Mr. Bethune, the contractor, with a view, if practicable, of a steamer being specially appropriated to that service. His Excellency being desirous to provide against soldiers being embarked with emigrants on board, in consequence of the typhus fever having broken out among some troops recently moved in this manner; and further directing that if the arrangement could not be carried out, to impress upon Mr. Bethune the necessity of excluding the lower class of emigrants in an unhealthy state, on the occasion of contemplated movements.

"To this requisition Mr. Bethune also assented, offering to be prepared to convey the troops in the manner required, and to carry no emigrants at such times.

"He then received a letter from the Assistant Commissary General, enclosing one from the Assistant Quarter Master General, dated 27th July last, conveying His Excellency's orders that no troops were to be embarked on board of vessels which had carried emigrants, unless such vessels had undergone a purifying process, to the satisfaction of the Quarter Master General's Department.

"To this Mr. Bethune answered, that he would be willing to adopt any method of purification which might be suggested; and stating the mode which had been adopted on board his boats, namely, the thorough washing and cleansing of the boats and offices, at the end of each voyage, and the use of chloride of lime.

"Mr. Bethune also received in the same letter from Mr. Bailey, a copy of a letter from the Assistant Quarter Master General, requiring that when small detachments of troops should be embarked in a vessel containing emigrants, the troops should be accommodated in the after part of the vessel, separated entirely from the emigrants. To this arrangement Mr. Bethune also assented.

"Mr. Bethune then received a letter from Assistant Commissary General Bailey, dated 29th July, with a copy annexed of a letter addressed to that officer from Major DeRottenburg, stating that Mr. J. H. Greer, of Kingston, for the purpose of preventing any possibility of infection from fever occurring amongst the troops to be embarked between Kingston, Toronto and Hamilton, had offered, on the part of Mr. Bethune, to provide steamers

in which no emigrants had been carried this season, naming the *Scotland*, *Traveller*, *England*, and *Ireland*, as being at his disposal for such service, and requiring to know whether Mr. Bethune would consent to such an arrangement.

"To this, Mr. Bethune replied, offering, as improvement upon the plan, and in place of the steamers named (which were freight boats, and without proper accommodation for officers), to send the *Admiral*, a boat which had been employed between Toronto and Niagara, and which had not carried emigrants, to bring up the officers and men, and offering the freight boats to bring up the women and the baggage. To this offer Mr. Bethune received no answer.

"The *Admiral* steamer was then employed on the Kingston line, and for the purpose of preserving her in a condition to comply with the requisition of H. M. officers, she was not allowed to carry emigrants—Mr. Bethune employing other steamers for the conveyance of emigrants at great expense. He informed the Baron DeRottenburg of this arrangement, and who was shewn over that boat, newly painted throughout and in perfect order for the conveyance of troops. The Baron DeRottenburg (Assistant Quarter Master General), on that occasion observed, that the boat would do very well.

"In the month of August, Mr. Bethune learned that the right wing of the 81st Regiment were conveyed from Toronto to Kingston, in Her Majesty's steamer *Cherokee*, and the right wing of the Rifles conveyed by the same boat from Kingston to Toronto.

"In the same month, about a hundred pensioners were moved from Kingston to Toronto in a steam freight boat, not belonging to Mr. Bethune, and which had carried emigrants during the season; and this, notwithstanding that one of Mr. Bethune's boats was in port at the time of the embarkation, and the Captain offered to convey the pensioners without any emigrants being allowed on board.

"On the 14th September, Mr. Bethune addressed a letter to Colonel Fraser, the Deputy Quarter Master General, stating that he had been informed that Captain Sutherland, of the steamer *Magnet*, had been requested to tender for the transport of troops from Kingston to Hamilton, and praying that the matter might be brought under the consideration of the Commander of the Forces, also offering to have the steamer *Admiral*, as well as another steamer in which no indigent emigrants had been conveyed, in readiness to convey the troops, so soon as their arrival at Quebec

should be heard of. To this letter Mr. Bethune received no answer.

"The master of the *Chief Justice* steamer, at Queenston, reported himself to the senior Commissariat Officer there, in readiness to convey the troops going down; and Mr. Bethune addressed two letters to inform the Assistant Commissary General, at Kingston, that he would have two steamers in readiness to convey the troops upwards. To these letters he received, for answer, that no requisitions had been received for the service, and that the arrangements for moving troops were not made by that department.

"In the month of September, the *Magnet* (an opposition steamer) conveyed on the 23rd, a wing of the 82nd Regiment from Queenston to Kingston; and on the 24th, a battalion of the 20th Regiment, from Kingston to Queenston; and, as Mr. Bethune is informed, she is intended to perform the service of conveying troops on the lake for the remainder of the season.

"OPINION.

"It appears to me, that Mr. Bethune was bound by his contract to furnish accommodation for the troops in vessels properly cleansed and purified. He was not bound to furnish vessels in which no emigrants had been conveyed during the season; but as he, nevertheless, was willing to do so, and to comply with all reasonable requisitions on the part of H. M. officers, whether within the letter of his contract or not, there can be no reason why he should be deprived of the benefit of that contract, by the contemplated services being transferred to others.

"I think Mr. Bethune was intended to have the conveyance of the whole of the troops moved on Lake Ontario, with the exception of those intended for the Bay of Quinte, the routes mentioned in the contracts including all the usual ones upon the lake.

"If Her Majesty's officers, either from extraordinary precaution, or from some other inducement, chose to alter their arrangements, and to carry troops in Her Majesty's ships, or in vessels not belonging to the contractor, I think Mr. Bethune, who had made all preparations necessary for the conveyance of the troops, is entitled to be placed in the same situation as if he had conveyed them.

"He is not accountable, any more than Her Majesty's Government, for the extraordinary and unforeseen circumstance of typhus fever existing amongst the emigrants; and had private

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persons contracted with him for passage on board his boats, that circumstance would not have avoided the contract. In that case, he would, I think, have been bound to use reasonable precaution, but not to refuse passage to emigrants, because some of them might possibly be diseased. I know of no difference between private contractors and the Government, if either think fit, from extraordinary caution, to depart from their undertaking, because of events not provided for in the contract, those with whom they contract should not be the sufferers.

"There is not, however, any mode by which Mr. Bethune can proceed to enforce his contract against the Government ; but in the absence of any legal remedy, there is one usually found fully equivalent, namely, an application to the Lords Commissioners of the Treasury, whose duty it is to see justice done between him and the Government. It may be that their Lordships will approve of the acts of the officers in charge in this Province, but I think they cannot allow Mr. Bethune to be a loser on account of a change in arrangements made with him, where he has not been in fault ; but on the contrary, where he has gone far beyond the letter of his contract in accommodating himself to all the requirements and suggestions of the military authorities.

(Signed) "R. B. SULLIVAN."

"Toronto, 27th September, 1847."

I also submitted the case, and Mr. Sullivan's opinion, to the Honourable Robert Baldwin, late Attorney General for Canada West ; and I have the honour to subjoin Mr. Baldwin's opinion :

"I have read the case arising on Mr. Bethune's contract with the Government for the transport of troops, &c., in 1847 ; and Mr. Sullivan's opinion on it, dated this day.

"I think, with Mr. Sullivan, that Mr. Bethune was intended to have the conveyance of the whole troops, &c., on the three routes contracted for by him. To pretend that the conveyance of troops from Kingston to Hamilton or Queenston, did not fall within these contracts on account of its being a direct voyage, would be a mere quibble, to which I cannot believe the Crown would resort, even if it could avail anything to them ; which, I am of opinion however, that it could not.

"It is true, we have no process by which Mr. Bethune can seek a legal remedy against the Government ; but, concurring with

Mr. Sullivan as to the justice of Mr. Bethune's claim, I cannot doubt but that the Crown will not allow that to be a bar to his obtaining his just demands.

(Signed) "ROB'T BALDWIN."

"27th Sept. 1847."

As it is my intention to submit the whole matter for the consideration of His Excellency the Commander of the Forces in Canada, I deem it proper to apprise you of it, that the military authorities at Kingston may be fully aware of my intentions in this respect; and should I fail to obtain that redress in this country to which I humbly conceive myself entitled, I shall, without delay, lay my case before the Lords Commissioners of Her Majesty's Treasury, for their Lordships' decision thereon.

I have the honour to be,

&c. &c. &c.

D. BETHUNE.

Assistant Commissary General BAILEY,

&c. &c. &c.

Kingston.

I believe that the foregoing communication contains all the information that it is necessary His Excellency should be furnished with by me; as, doubtless, the Commissary General at Montreal, has copies of all correspondence that has taken place between me, or the Captains of my steamers, and the military authorities at Kingston, since the opening of the navigation this year; and I have no doubt His Excellency will be put in possession of that correspondence.

In addition to the letters that have passed between me and Mr. Bailey, the Captains of my steamers—who have also acted as my agents at Kingston—have addressed notes to the Commander of the Forces, and other authorities at Kingston, and which have also been forwarded to the Commissary General. In the month of August, a note was addressed to the Major General Commanding the Forces in Canada West, offering to place the steamer *Admiral* at the disposal of Government, for the transport of troops; and to which the Commissary General replied, that my contract was "with the Commissariat," and that

whenever I considered I had any claim under it, I should address myself "to the Commissariat Officer."

From the whole tenor of that correspondence, and from the requisitions that have been almost daily made up to the present time for the transport of troops, &c., under the contract, it is clear that there has been no attempt made to put an end to that contract;—that it still considered in full force and effect.

It appears to me then, that the only question for His Excellency's consideration is, whether the Government can one day give me a requisition to perform certain things under my contract, and the next day give a requisition to a stranger, or any other party, for the performance of something else which I am bound and am always ready to perform under it; whether, in fact, I am bound to keep up a line of steamers to perform my contract with Government, and the Government can give the whole benefit of it to any other party they may select for the performance of it, without reference to me. If such be the use of a contract with Government, it should be generally known.

I cannot but consider the question as so clear, upon a plain, honest, common-sense view of it, that it must be apparent (without reference to any legal opinion), what is due to me under that contract; and I have no doubt that His Excellency's decision will amply justify the opinion I entertain upon the merits of my claim. I have, therefore, humbly to request that His Excellency the Commander of the Forces will be pleased to order payment to me for all the troops, &c., that have been conveyed across Lake Ontario this year, in any other vessel than my own, in the same way as if I had been furnished with requisitions for the performance of such service.

These troops were, as far as I am informed, the head quarters division of the 81st Regiment and of the Rifles, from Kingston to Toronto, and vice versa; the 82nd Regiment and the 20th Regiment, from Kingston to Queenston, and vice versa; and Pensioners, in the *Earl Cathcart*, propeller, from Kingston to Toronto.

I certainly cannot understand the hostility manifested towards me by some of the military authorities at Kingston. It has gone so far, that they seem to have taxed their ingenuity for some pretext, however slender, for depriving me of the benefit of my contract; and I cannot but think that the change of route from Hamilton to Queenston, for the troops moving to and from London, was suggested for the purpose of injuring me,—as they supposed my contract more vulnerable at Queenston than at Hamilton. However that may be, it is much to be regretted that the change of route has been so injurious to the public service; for it seems the placing men some fifty miles nearer the American frontier, and within a mile of the American shore, induced desertion to a considerable extent, and which would have been avoided if the men had marched from Hamilton to London.

I am far from supposing that His Excellency the Commander of the Forces would countenance injustice for a single moment; and although His Excellency may have approved of the alteration of the route of the troops alluded to, he could not have been aware of the reasons that influenced those who suggested that alteration.

I have had the Government contracts on Lake Ontario for many years, and I think I can safely say, that the Government transport across that Lake has never been more satisfactorily performed than by me; and why I should not have been required to remove the troops from Queenston to Kingston and vice versa, although my steamers were in readiness at the wharf; and why the steamer *Magnet* was chosen for that purpose, I certainly cannot divine. My steamer *Admiral*, that had carried no emigrants, was ordered away from the Government wharf at Kingston, although sent there for the express purpose of removing the troops. The steamer *Scotland* was also in attendance, for the removal of the luggage, &c.; but, as Mr. Bailey said, no requisition had been received by him for that purpose.

I believe I have now stated all the facts necessary for a full

understanding of the case by His Excellency the Commander of the Forces, as a copy of my contract is, no doubt, in His Excellency's possession, or in that of the Commissary General.

Since writing the foregoing, I have this day received a reply from Mr. Bailey, to my letter of the 27th ultimo, and containing Commissary General Filder's answer to Mr. Bailey's letter to the Commissary General, of the 29th, enclosing my letter of the 27th September; and now beg to add hereto a copy of my reply to the Commissary General :

TORONTO, October 9, 1847.

SIR,

I have the honour to acknowledge the receipt of your letter of the 8th instant, enclosing the answer of Commissary General Filder to my letter to you of the 27th September; and, in reply thereto, I beg to say that the Commissary General has wholly mistaken the nature of my contract for the transport of troops across Lake Ontario, in stating that I had "no contract for the conveyance of troops *direct* from Queenston to Kingston;" and that he is also mistaken in the reason he gives for supposing that I had not the contract for all the troops to be moved across Lake Ontario, namely, that "it is unreasonable to suppose that we are to pay for the direct and shorter voyage the rates fixed for the two separate voyages from Kingston to Toronto, and from Toronto to Queenston."

Formerly, and until, I think, the year 1844, the contracts for the transport of troops from Kingston across Lake Ontario, were to every port westward of Kingston—including Toronto, Hamilton and Queenston; and the rates were charged, so lately as 1843, as follows:—Kingston to Toronto, for soldiers, 10s.; Kingston to Hamilton, 15s.; Kingston to Queenston, 15s.; and so in proportion for officers, stores, &c.; so that the opinion entertained by the Commissary General, as to there having been, at any time, a separate contract for the *direct* route to Queenston, and at a cheaper rate than I have charged this year, is incorrect. I venture to say,—having been concerned in that contract, either in my own name, or in that of some other party, since 1840, that there never was a contract within the last ten years, for the *direct* route from Kingston to Queenston, and at a reduced rate, as stated by the Commissary General. The contracts, until 1844, I think, always embraced every British port on the lake, west or south-west of Kingston; and the contracts from

Toronto to Hamilton, and from Toronto to Queenston, were never considered as interfering with the main contract from Kingston to all the ports as I have stated; but were merely for the convenience of moving the troops from Toronto to Hamilton, and from Toronto to Queenston.

Surely the Commissary General does not mean to say that there was no contract entered into this year for the transport of Troops between Kingston and Queenston, or between Kingston and Hamilton. If so, how has it happened that I have received so many requisitions for the conveyance of troops between these points? The division of the general contract into three, does not alter my right to benefit by it; and your letters, enclosing those of the Assistant Quarter Master General, for the transport from Kingston to Hamilton of the very troops sent afterwards in the *Magnet*, shows that to have been the view entertained of the contract until very recently.

It might as well be contended that, because there is no contract between Montreal and Queenston *direct*, or between Montreal and Hamilton *direct*, that notwithstanding the separate contracts entered into by the Commissariat with the Hon. Mr. Hamilton and myself for the transport of troops between those points, that it would be competent for the Commissariat to enter into another contract with another party for the *direct* route from Montreal to Hamilton or Queenston.

Does the Commissary General seriously suppose that either Mr. Hamilton or I would have entered into the contracts with Government for the transport of troops from Montreal upwards, if we could have conceived it possible that such a construction would have been put upon our contracts as would have deprived us of the benefit of them whenever the Commissariat might think it advisable to do so?

Surely no man in his senses could think that we would have done so.

As for the statement of the Commissary General that I have exacted exorbitant rates for the transport of troops from Kingston to Toronto, I beg to say, that they are one-third less than those charged by Mr. Hamilton from Montreal to Kingston,—the distance being the same or nearly so, and not higher than they have been for the last ten years, but in fact lower.

And I have also to state, that both Mr. Baldwin and Mr. Sullivan had before them a copy of the *old* as well as of the new contract between me and the Commissariat (including Hamilton and Queenston), when they formed their opinion ; and that it was with reference to the *direct* route from Queenston to Kingston that Mr. Baldwin said, " To pretend that the conveyance of troops from Kingston to Hamilton, or Queenston, did not fall within these contracts on account of its being a *direct* voyage, would be a mere quibble, to which I cannot believe the Crown would resort, even if it could avail anything to them—which I am of opinion, however, that it could not."

It is, therefore, clear to me, that the Commissary General is misinformed as to the nature of the contracts formerly entered into for the transport of troops across Lake Ontario ; and that he has taken an erroneous view of the letter and spirit of the contracts entered into with me ; and I trust that, upon a reconsideration of the whole matter, he will not hesitate to acknowledge his error, and see justice done to me.

I have only to add, that I have never heard of the transport of troops, &c., across Lake Ontario, or between Kingston and Montreal, or between Montreal and Quebec, in Government vessels ; and that, therefore, I cannot conceive how it can be the " universal rule throughout this command" to deprive, in that way, the contractor of the benefit of the removal of the troops.

I have the honour to be, &c.,

D. BETHUNE.

To Assistant Comm'y Gen'l BAILEY,
&c. &c. &c, Kingston.

From what has been said, I trust that His Excellency will be convinced that I was entitled to the removal of the troops under the contracts, and that I should not be deprived of the benefit thereof.

I have the honour to be, Sir.

Your most Obedient Humble Servant,

D. BETHUNE.

To the Military Secretary,
To His Excellency the Commander of the Forces,
Head Quarters, Montreal.